

BRAND | WOODWARD

Attorneys at Law

Stan M. Brand

Stanley E. Woodward Jr.

December 13, 2021

VIA ELECTRONIC MAIL

The Honorable Bennie G. Thompson
Chairman
Select Committee to Investigate the January 6th Attack on the United States Capitol
U.S. House of Representatives
Washington, District of Columbia 20515

Re: Daniel J. Scavino, Jr.

Dear Chairman Thompson:

We are in receipt of your correspondence of December 9, 2021. For the second time in as many weeks, you have demanded an immediate response from us with little regard for either our, or our client's, time and availability. Specifically, your staff provided us with your correspondence Thursday, at 7:15pm est, and advised that they wished to speak with us today, as early as at 9:30am the following day. Similarly, your last correspondence provided us with a mere 72 hours to respond, including the Thanksgiving Holiday. Yet, as you acknowledge in your correspondence, *more than two weeks* have passed without the courtesy of a reply. Unfortunately, public records will show that the undersigned was in court Friday and not otherwise available for a teleconference with your staff.

To that end, we respectfully disagree with the way in which you have characterized our non-written conversations with your staff. We again encourage your careful consideration of our prior correspondence, which clearly articulates our client's specific concerns with the Select Committee's subpoenas. Out of an abundance of caution, that correspondence, dated November 5, 2021, November 15, 2021, November 18, 2021, and November 23, 2021, is attached for your reference.

Although we hope it obvious, the tone of your latest correspondence compels us to unambiguously affirm the high esteem with which we hold United States House of Representatives, a body for which Mr. Brand served as Chief Counsel, and its important function within our co-equal branches of government. It is our profound respect for the institution that obliges us to ensure that the work of the House, and by extension its committees, carefully accords with the limits imposed by the doctrine of Separation of Powers. On behalf of our client, Dan Scavino, we ask of the Select Committee of nothing more than that to which he is entitled under the law.

We wish not to reiterate the concerns we have specifically articulated in our prior correspondence and again encourage your careful consideration of the same. We would

December 13, 2021
Page 2

respectfully disagree, however, with your characterization of Mr. Scavino's exercise of these important rights as his having "repeatedly rebuffed every request that he identify particularized assertions of privilege, as required by law, areas of inquiry for which he does not intend to assert privilege, areas of inquiry for which he has no responsive information, and/or areas of inquiry for which he does not object to pertinence." We address these mischaracterizations in turn.

You write that Mr. Scavino has "repeatedly rebuffed" the Select Committee's request "to identify particularized assertions of privilege" as "required by law." To the contrary, in our correspondence of November 15, 2021, Mr. Scavino articulated with great detail several categories of communications over which we submit an assertion of executive privilege would be warranted. Moreover, we advised that because President Trump has directed Mr. Scavino to assert any applicable privilege as to those records, which "gives rise to a legal duty on the part of [Mr. Scavino] to invoke the privilege on the President's behalf." *Comm. On the Judiciary v. McGahn*, 415 F. Supp. 3d 148, 213 n.34 (D.D.C. 2019). The Select Committee has provided no response to this proffer by Mr. Scavino, instead simply mischaracterizing Mr. Scavino's response as an improper blanket assertion of privilege. Moreover, Mr. Scavino cannot even begin to address how the executive privilege will implicate his testimony given that the Select Committee has failed to provide Mr. Scavino with the information necessary to do so.

To that end, you write that Mr. Scavino has "repeatedly rebuffed" the Select Committee's request that he identify "areas of inquiry for which he does not intend to assert privilege." Again, this mischaracterizes Mr. Scavino's position. Rather, in our correspondence of November 18, 2021, we requested that the Select Committee "furnish an explanation as to how any desired 'matter of inquiry' falls within the jurisdiction vested by Congress." Rather than respond to Mr. Scavino's request, your correspondence of November 23, 2021, failed to address the issue of pertinence at all. Now, your correspondence of December 9, 2021, broadly asserts: "The items identified by the Select Committee's subpoena and the November 9, 2021 letter . . . are unquestionably pertinent to the Select Committee's jurisdiction." Respectfully, Mr. Chairman, such *ipse dixit* – mere "blanket assertions" of jurisdiction – is what has stymied our efforts to foster further discussion and continued collaboration with the Select Committee. And while your correspondence of December 9, 2021, does portend to address our concern over the pertinence of the "matters of inquiry" identified by the Select Committee, merely reciting the language within your initial October 9, 2021 correspondence to Mr. Scavino does little to elucidate the matter. To be clear, our ask is not that the Select Committee "provide a question-by-question preview to Mr. Scavino in advance of [his] deposition." However, the Select Committee has failed to address in any way the specific "matters of inquiry" we identified in our correspondence of November 18, 2021, that appear to be beyond the scope of the Select Committee's jurisdiction, including your admonishment that "the Select Committee reserves the right to question Mr. Scavino about other topics."

You also write that Mr. Scavino has "repeatedly rebuffed" the Select Committee's request that he identify "areas of inquiry for which he has no responsive information, and/or areas of inquiry for which he does not object to pertinence." This is simply not true – the Select Committee has yet to ask Mr. Scavino to identify any "matter of inquiry" for which he has no responsive information – and this mischaracterization again casts doubt on the Select Committee's careful consideration of the numerous legal and procedural issues raised by our prior correspondence. For it is this mischaracterization that highlights what has been a consistent theme in the Select

December 13, 2021

Page 3

Committee's demands – the obligation of *Mr. Scavino* to facilitate the Select Committee's taking of his deposition. Contrary to the Select Committee's assertion, however, Mr. Scavino has a Constitutional right to the information he has requested: "It is obvious that a person compelled to [testify] is entitled to have knowledge of the subject to which the interrogation is deemed pertinent [and] [t]hat knowledge must be available with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offense." *Watkins*, 354 U.S. 178, 208-09 (1957). The Select Committee's demand in effect amounts to forcing Mr. Scavino to waive his Constitutional rights, which the Select Committee cannot do. *See Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). *See also United States v. North*, 920 F.2d 940, 946 (D.C. Cir. 1990) (*en banc*) ("The political needs of the majority, or Congress, or the President, never, never, never should trump an individual's explicit constitutional protections.").

Sincerely,



Stan M. Brand



Stanley E. Woodward Jr.